

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 124 of 1998

Allahabad this the 25th day of August, 2004

**Hon'ble Mr. Justice S.R. Singh, Vice Chairman
Hon'ble Mr. D.R. Tiwari, Member (A)**

Prashant Kumar Upadhyay, aged about 20 years, S/o Shri Raghav Prasad Upadhyay, R/o Village & Post – Arail, P.S. Naini, Tehsil – Karchana, District Allahabad.

Applicant

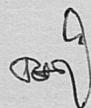
By Advocate Shri Rakesh Verma

Versus

1. Union of India through the Secretary, Ministry of Communication Department of Posts, New Delhi.
2. The Post Master General, Head Post Office, Civil Lines, Allahabad.
3. The Senior Superintendent of Post Offices, Allahabad Division, Allahabad.
4. Shri Prem Shankar Tewari, S/o Shri Sarjoo Prasad Tewari, R/o Village & Post – Ghoorpur, Tehsil – Karchana, District Allahabad, at present working as Extra Departmental Branch Post Master, Arail Post Office in Account Office, Naini Post Office.

Respondents

By Advocates **Shri S.K. Anwar**, for official respondents
{**Shri K.N. Misra**,} for private respondent
Shri R.P. Singh



O R D E R { Oral }

By Hon'ble Mr. Justice S.R. Singh, V.C.

The applicant herein has instituted the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 for quashing the impugned order dated 26.11.1996 whereby the fourth respondent has been offered appointment to the post of Extra Departmental Sub Post Master (for short E.D.S.P.M.) , Ghoorpur, Allahabad. The other relief claimed is that respondent no.3 be directed to take the selection initiated vide notification dated 18.09.1997 to its logical conclusion by selecting a candidate on the basis of merit in accordance with rules. The applicant and the fourth respondent were amongst the candidates who had applied for the post pursuant to the notification aforesated. It is not disputed that fourth respondent was earlier appointed to the post of E.D.S.P.M., Ghoorpur due to a regular selection process held in pursuance of the notification issued in the year 1993. The appointment was made vide order dated 08.02.1993 but services of the fourth respondent came to be terminated vide order dated 20.04.1993 due to the reason of irregularity in selection. Validity of the said order dated 22.04.1993 was challenged in O.A.No. 763 of 1993 but the same was dismissed on 22.12.1995. While dismissing the O.A. against the termination order the Tribunal directed the respondents to make a fresh selection "from amongst the candidates sponsored in 1993 by the Employment Exchange considering their current place of residence." The fourth respondent, it appears, was selected and appointed vide order dated 01.05.1996 but his services were terminated vide order dated 07.11.1996 due to the reason of irregularity in selection. A fresh notification dated 18.09.97 was issued inviting applications. The fourth respondent, however, filed O.A.No. 1194 of 1996 but during the pendency of O.A.No. 1194 of 1996, he came to be appointed vide order dated 26.11.1997 pursuant to the directions given by the Post Master General, Allahabad vide letter dated 10.11.1997 for giving appointment to fourth respondent in view of the fact that he had completed 3 years of



service as E.D.S.P.M. On the request of respondent no.4, O.A.No.1194/96 was dismissed as withdrawn. The applicant who was a candidate in the process of selection initially in the year 1996, has challenged the offer of appointment dated 26.11.1997 on the ground that competent authority ought to have taken the selection process to its logical end instead of offering appointment to the fourth respondent by taking into consideration his services on the basis of earlier appointments, referred to above.

2. The question that arises for consideration is whether the services rendered by the fourth respondent on the basis of appointment which was found to be illegal/irregular leading to termination of his services, can be a ground for offering appointment under D.G. P & T letter no. 43-4/7-Pen dated 18.05.1979 and Circular no.19-34/99-ED. & Trg. Dated 30.12.1999, the relevant portion of which reads as under:-

“Efforts should be made to give alternative employment to E.D. Agents who are appointed provisionally and subsequently discharge from service due to administrative reasons. If at the time of discharge they had put in not less than 3 years continuous approved service. In such cases there names should be included in the seniority list of E.D. Agents discharged from service, prescribed in D.G. P & T letter no.43-4/77-Pen dated 23.07.1979.”

3. It has been submitted by Shri Rakesh Verma, learned counsel for the applicant that application of aforesated provision by the appointing authority was not just and proper in view of the fact that fourth respondent was not “provisionally” appointed nor was he subsequently “discharged from service due to administrative reasons” but his appointment was terminated due to the reason of irregularity and illegality in the selection process and the termination order was sustained by the Tribunal. S/Shri S.K. Anwar and K.N. Misra, learned counsel appearing for the respondents have submitted that fourth respondent was entitled to get the benefit of the provision aforesated. He has placed reliance on a decision of the Cuttack Bench of this

Deo

Tribunal in the case of Parmananda Bhoi Vs. U.O.I. & Ors. 2004(2)
A.T.J. 414.

4. We have given our anxious consideration to the submissions made across the bar. We are of the considered view that the provisions providing for alternative appointment, as referred to herein above, are not attracted to the present case. It would be evident from the language implied in D.G. P & T letter dated 18.05.1979 and the circular dated 30.12.1999 referred to herein above that alternative employment may be offered to the E.D. Agents who were appointed "provisionally" and subsequently "discharged from the service due to administrative reasons." The fourth respondent was initially appointed by the order dated 08.02.1993 and his services were subsequently terminated vide order dated 22.04.93. He, however, continued up to 10.04.1996 pursuant to the interim order passed by the Tribunal. Fourth respondent was again appointed on 01.05.1996, which continued up to 07.11.1996. The services rendered by the fourth respondents pursuant to the interim order was, no doubt, more than three years but in case the services rendered pursuant to the interim order is excluded, the fourth respondent cannot be said to have completed three years of service, nor can it be said that he was "provisionally appointed" and "subsequently discharged from service due to administrative reasons." As stated herein above, fourth respondent was offered appointment on the basis of a regular selection proceeding, which was found to be irregular, and on that basis his service was terminated. The fourth respondent was, therefore, not entitled to seek alternative employment under the provision aforesated.

5 D.G. P & T letter dated 08.08.1993 provides that the E.D. Agents whose services are to be dispensed with on departmentalisation of their offices, may be provided for an appointment on a post available in Extra Departmental Posts if they are suitable and willing. This provision will also not apply to the facts of the present case.

(Signature)

6. In Veepathu Vs. A.E.O. 1998 (2) A.T.J. 110, the Kerala High Court has held that period of service rendered on the strength of interim order, which was subsequently vacated, would not entitle the party to claim any benefit out of the interim order. In coming to this conclusion the Kerala High Court has taken support of a decision by the Hon'ble Apex Court in N. Mohanan Vs. State of Kerala, wherein their Lordships had held that the interim order passed by the Court is subject to the outcome of final adjudication and if the petitioner is not successful in the final decision, the interim order would stand set aside and so appointment by the interim order does not create any right to claim regularisation. These decisions were though not rendered in the context of provisions we are concerned herewith, the principle that party cannot take advantage of continuation of his services on the basis of interim order in case the final decision goes against him, is well settled. We have already held that the circular on the basis of which the fourth respondent was perhaps ordered to be appointed by the Post Master General is not applicable to a case where an appointment is set aside on the ground of irregularity in the process of selection. In our opinion, therefore, order of offer of appointment dated 26.11.1997 is liable to be quashed.

7. Accordingly the O.A. succeeds and is allowed. The impugned order dated 26.11.1997 is quashed with the direction that the Senior Superintendent of Post Offices shall take the selection process to its logical end by selecting a candidate from amongst the candidates who had applied in pursuance to the notification dated 18.09.1997 and till then the fourth respondent shall be allowed to continue. The exercise in this regard shall be completed within a period of 3 months from the date of receipt of a copy of this order.


Member (A)

{M.M.}


Vice Chairman